

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mohd. Ameer Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.823/2005)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C.
against the judgment dated 9-8-2005 in Special Case
No.245/2001 passed by Sh. Ram Kishan Songara,
RHJS, Special Judge (NDPS Cases) Bharatpur.

Date of Judgment:

January 04, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Anil Upman, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in this appeal is to the judgment dated August 9, 2005 of the Learned Special Judge (NDPS Cases) Bharatpur, whereby Mohd.Ameer, the appellant herein, was convicted and sentenced under section 8/29 Narcotic Drugs and Psychotropic Substances Act,1985 (for short 'NDPS Act') to undergo 10 years rigorous imprisonment and fine of Rs.1 lac, in default to further suffer 2 years simple imprisonment.

2. It is the prosecution case that on July 23, 2001 while Constables Om Prakash Meena and Om Prakash Bairwa were on duty as train-guard on Train No.2415 down Intercity Express, they intercepted two persons travelling in Coach S-3. The person sitting on the seat of TT was Mohd.Ameer (appellant) and the other sitting on bedding was Shahbuddin.

They were got down at Bharatpur station. Bedding possessed by Shahbuddin was searched and opium weighing 3 kg. 50 gm. and 3kg.40gm. was found in it. On searching the person of Mohd.Ameer, two tickets from Ramganjmandi to Delhi were found. FIR No.68/2001 was registered. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge (NDPS Cases) Bharatpur. Charge under section 8/18 NDPS Act was framed against Shahbuddin. Since Shahbuddin died during trial, proceedings against him stood dropped. The appellant Mohd.Ameer who was charged under section 8/29 NDPS Act, denied the charge and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. I have heard the submissions advanced before me and scanned the material on record.

4. Having closely scrutinised the evidence of Constable Om Prakash Meena (Pw.6) and Om Prakash Bairwa (Pw.14), I notice that the opium was kept in the bedding which was in the exclusive possession of Shahbuddin. As far as the appellant is concerned he was proceeded under section 8/29 of the NDPS Act by assuming that there was criminal conspiracy between him and Shahbuddin.

5. It is no doubt true that two tickets were recovered from the appellant but on this ground alone it could not have been inferred that

opium found in the possession of Shahbuddin was in conscious possession of the appellant. I find no evidence to suggest that there was any abetment and/ or criminal conspiracy within the meaning of Section 29 of NDPS Act. Shahbuddin and appellant although found travelling together, it could not be established that they were jointly carrying opium. Hence, it was not possible for the learned trial court to take the view that Section 8/29 NDPS Act was attracted.

6. For these reasons, I allow the appeal and set aside the impugned judgment dated August 9, 2005 of Special Judge, NDPS Cases Bharatpur. I acquit the appellant of the charge under section 8/29 NDPS Act. The appellant Mohd. Ameer, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.

(Shiv Kumar Sharma)J.

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